THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11825 OF 2006

Dated: 10th July, 2006.

Between:

Eluri Venkatanarayana … Petitioner

And

1. The General Manager, Telecom Department, BSNL Bhavan, Vijayawada, Krishna District, And 2 others. … Respondents

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WRIT PETITION NO.11825 OF 2006

ORDER :

The petitioner claims to be the owner and possessor of the land admeasuring Ac.1.45 cents situated in R.S.No.150/4 of Vatsavai Village and Mandal, Krishna District. It is stated that he had voluntarily executed a Registered Gift Deed, dated 18-1-1984 in favour of the Telecom Department in respect of Ac.0-12 cents out of the total extent of Ac.1-45 cents for the purpose of construction of a building for Telephone Exchange. The vacant possession of Ac.0-12 cents of land was delivered to the respondents. It is stated that thereafter in spite of several requests made by the petitioner to take up construction of telephone exchange building, the respondents failed to do so. However, the petitioner has recently came to know that the respondents are making attempts to erect a tower in the site gifted by him. Aggrieved by the said action of the respondents, this writ petition is filed contending inter alia that the purpose for which the land was gifted would be defeated if the same is used for erection of a tower.

I have heard the learned Counsel for both the parties and perused the material on record.

On behalf of the respondents, a counter-affidavit has been filed stating that the allegation that the respondents had erected a tower is incorrect, but only a compound wall was constructed by the respondents. It is also stated that the construction of tower being an allied work relating to the construction of telephone exchange, the contention of the petitioner is untenable. It is stated that the land to an extent of Ac.0-12 cents was donated by the petitioner by executing an unconditional gift deed and it was registered in the name of Divisional Engineer, Department of Telecommunications, Machilipatnam, Krishna District on 18-1-1984. Thereafter, the respondents have constructed fencing as per the schedule of the gift deed and the same has been in possession and enjoyment of the respondents with absolute rights. It is further stated that the

construction of the tower is an associated activity for functioning of the telephone exchange to cater to the needs of the telephone subscribers with various services in the rural areas and that the construction of telephone exchange building and tower erection would be undertaken on receipt of sanction/approval from the competent authority. The other allegations made by the petitioner have been denied and it is stated that as a matter of fact the petitioner filed O.S.No.101 of 2006 on the file of the Court of Junior Civil Judge, Jaggaiahpet which is still pending and therefore the writ petition is not maintainable.

May be that, the land in question was gifted to the respondents - Telecom Department for construction of a building to locate telephone exchange. However, as rightly contended by the respondents the erection of tower cannot be said to be contrary to the purpose for which the land was gifted. At any rate, the respondents have categorically stated in the counter-affidavit that they have constructed only compound wall around the site in question and presently no tower is being erected. It is also clear from the counter-affidavit, the contents of which remained un-rebutted, that the petitioner has filed O.S.No.101 of 2006 on the file of the Court of Junior Civil Judge, Jaggaiahpet seeking a decree for injunction against the respondents and though he sought for a temporary injunction the same was not granted. Hence, the present writ petition is misconceived.

Accordingly, Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 10-7-2006

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